

an approval or waiver under the terms of such instruments, and in any regulations implementing such instruments, with respect to facilities financed with debt obtained entirely from non-RUS sources without an RUS guarantee.

(i) *Access of handicapped to buildings and seismic safety.* A borrower must meet the following requirements to be eligible for a lien accommodation or subordination for 100 percent private financing of the construction of buildings:

(1) The borrower must provide RUS with a certification by the project architect that the buildings will be designed and constructed in compliance with Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), as applicable under that Act, and that the facilities will be readily accessible to and usable by persons with handicaps in accordance with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR part 101.19, subpart 101–19.6). The certification must be included in the borrower's application for a lien accommodation or subordination. In addition to these requirements, building construction may also be subject to requirements of The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*); and

(2) The borrower must comply with RUS's seismic safety requirements set forth in 7 CFR part 1792, subpart C.

(j) *Breach of warranty.* Any breach of any warranty or agreement or any material inaccuracy in any representation, warranty, certificate, document, or opinion submitted pursuant to this subpart, including, without limitation, any agreement or representation regarding the use of funds from loans lien accommodated or subordinated pursuant to this subpart, shall constitute a default by the borrower under the terms of its loan agreement with RUS.

(k) *Guaranteed loans.* The provisions of this subpart do not apply to lien accommodations or subordinations sought for loans guaranteed by RUS. Such lien accommodations and subordinations are governed by RUS regulations on guaranteed loans.

(l) *Release of lien.* To avoid repetition, release of lien is not mentioned in every instance where it may be an ac-

ceptable alternative to subordination of RUS's lien. Generally, lien subordination is favored over release of lien, and any decision to release RUS's lien is at the sole discretion of RUS.

(m) *Waiver authority.* Consistent with the RE Act and other applicable laws, any requirement, condition, or restriction imposed by this subpart, or subpart S of this part, on a borrower, private lender, or application for a lien accommodation or subordination may be waived or reduced by the Administrator, if the Administrator determines that said action is in the Government's financial interest with respect to ensuring repayment and reasonably adequate security for loans made or guaranteed by RUS.

(n) *Liability.* It is the intent of this subpart that any failure on the part of RUS to comply with any provisions hereof, including without limitation, those provisions setting forth specified timeframes for action by RUS on applications for lien accommodations or lien subordinations, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

[58 FR 53843, Oct. 19, 1993, as amended at 60 FR 67408, Dec. 29, 1995]

§ 1717.851 Definitions.

Terms used in this subpart have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this subpart:

Borrower's financial and statistical report means RUS Form 7, Parts A through D, for distribution borrowers, and RUS Form 12a for power supply borrowers.

Calendar day means any day of the year, except a Federal holiday that falls on a work day.

Capital investment. For the purposes of § 1717.860, capital investment means an original investment in an asset that is intended for long-term continued use or possession and, for accounting purposes, is normally depreciated or depleted as it is used. For example, such assets may include land, facilities, equipment, buildings, mineral deposits, patents, trademarks, and franchises. Original investments do not include refinancings or refundings.

Current refunding means any refunding of debt where the proceeds of the new debt are applied to refund the old debt within 90 days of the issuance of the new debt.

Default under the RUS mortgage, loan contract, restructuring agreement, or any other agreement between the borrower and RUS means any event of default or any event which, with the giving of notice or lapse of time or both, would become an event of default.

Equity, less deferred expenses, means Line 33 of Part C of RUS Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Front-end costs means the reasonable cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities and other investments eligible for a lien accommodation or subordination under this subpart.

Lien accommodation means the sharing of the Government's (RUS's) lien on property, usually all property, covered by the lien of the RUS mortgage.

Lien subordination means allowing another lender to take a first mortgage lien on certain property covered by the lien of the RUS mortgage, and the Government (RUS) taking a second lien on such property.

Natural gas distribution system means any system of community infrastructure whose primary function is the distribution of natural gas and whose services are available by design to all or a substantial portion of the members of the community.

Net utility plant means Part C, Line 5 of RUS Form 7 (distribution borrowers) or Section B, Line 5 of RUS Form 12a (power supply borrowers).

Power cost study means the study defined in 7 CFR 1710.303.

Solid waste disposal system means any system of community infrastructure whose primary function is the collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Telecommunication and other electronic communication system means any system of community infrastructure whose primary function is the provision of telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

Total assets, less deferred expenses means Line 26 of Part C of RUS Form 7 less assets properly recordable in Account 182.2, Unrecovered Plant and Regulatory Study Costs, and Account 182.3, Other Regulatory Assets.

Total outstanding long-term debt means Part C, Line 38 of RUS Form 7.

Transaction costs means the reasonable cost of legal advice, accounting fees, filing fees, recording fees, call premiums and prepayment penalties, financing costs (including, for example, underwriting commissions, letter of credit fees and bond insurance), and printing associated with borrower financing.

Water and waste disposal system means any system of community infrastructure whose primary function is the supplying of water and/or the collection and treatment of waste water and whose services are available by design to all or a substantial portion of the members of the community.

Weighted average life of the loan means the average life of the loan based on the proportion of original loan principal paid during each year of the loan. It shall be determined by calculating the sum of all loan principal payments, expressed as a fraction of the original loan principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted average life would be: $(.2)(1 \text{ year}) +$

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$(.2)(2 \text{ years}) + (.2)(3 \text{ years}) + (.2)(4 \text{ years}) + (.2)(5 \text{ years}) = .2 \text{ years} + .4 \text{ years} + .6 \text{ years} + .8 \text{ years} + 1.0 \text{ years} = 3.0 \text{ years}$. If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted average life would be: $(\$5 \text{ million}/\$5 \text{ million})(5 \text{ years}) = 5 \text{ years}$.

[58 FR 53843, Oct. 19, 1993, as amended at 59 FR 3986, Jan. 28, 1994; 60 FR 67409, Dec. 29, 1995]

§ 1717.852 Financing purposes.

(a) *Purposes eligible*. The following financing purposes, except as excluded in paragraph (b) of this section, are eligible for a lien accommodation from RUS, or in certain circumstances a subordination of RUS's lien on specific assets, provided that all applicable provisions of this subpart are met:

(1) The acquisition, construction, improvement, modification, and replacement (less salvage value) of systems, equipment, and facilities, including real property, used to supply electric and/or steam power to:

(i) RE Act beneficiaries; and/or

(ii) End-user customers of the borrower who are not beneficiaries of the RE Act. Such systems, equipment, and facilities include those listed in 7 CFR 1710.251(c) and 1710.252(c), as well as others that are determined by RUS to be an integral component of the borrower's system of supplying electric and/or steam power to consumers, such as, for example, coal mines, coal handling facilities, railroads and other transportation systems that supply fuel for generation, programs of demand side management and energy conservation, and on-grid and off-grid renewable energy systems;

(2) The purchase, rehabilitation and integration of existing distribution facilities, equipment and systems, and associated service territory;

(3) The following types of community infrastructure substantially located within the electric service territory of the borrower: water and waste disposal systems, solid waste disposal systems, telecommunication and other electronic communications systems, and natural gas distribution systems;

(4) Front-end costs, when and as the borrower has obtained a binding commitment from the non-RUS lender for the financing required to complete the

procurement or construction of the facilities;

(5) Transaction costs included as part of the cost of financing assets or refinancing existing debt, provided, however, that the amount of transaction costs eligible for lien accommodation or subordination normally shall not exceed 5 percent of the principal amount of financing or refinancing provided, net of all transaction costs;

(6) The refinancing of existing debt secured under the mortgage;

(7) Interest during construction of generation and transmission facilities if approved by RUS, case by case, depending on the financial condition of the borrower, the terms of the financing, the nature of the construction, the treatment of these costs by regulatory authorities having jurisdiction, and such other factors deemed appropriate by RUS; and

(8) Lien subordinations for certain rural development investments, as provided in § 1717.858.

(b) *Purposes ineligible*. The following financing purposes are not eligible for a lien accommodation or subordination from RUS:

(1) Working capital, including operating funds, unless in the judgment of RUS the working capital is required to ensure the repayment of RUS loans and/or other loans secured under the mortgage;

(2) Facilities, equipment, appliances, or wiring located inside the premises of the consumer, except:

(i) Certain load-management equipment (see 7 CFR 1710.251(c));

(ii) Renewable energy systems and RUS-approved programs of demand side management and energy conservation; and

(iii) As determined by RUS on a case by case basis, facilities included as part of certain cogeneration projects to furnish electric and/or steam power to end-user customers of the borrower;

(3) Investments in a lender required of the borrower as a condition for obtaining financing; and

(4) Debt incurred by a distribution or power supply borrower to finance facilities, equipment or other assets that are not part of the borrower's electric system or one of the four community